IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Crl.Rev.Pet.No. 4467 of 2007()

C.C.NO.923 OF 1996 J.F.C.M- III, NEYYATINKARA
CRL.APPEAL NO.323 OF 1999 ADDITIONAL SESSIONS JUDGE FAST TRACK II, TRIVANDRUM

REVN. PETITIONER:

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1. JOY S/O.SATHYANESAN NADAR,
NABIATHY KAYAYARA PUTHEN VEEDU,
KARUMKULAM,
NEYYATINKARA TALUK.

2. SATHYANESAN NADAR S/O.RAYAPPAN,
NABIATY KADAYARA PUTHEN VEEDU,
KARUMKULAM,
NEYYATINKARA TALUK.

3. RAJAN S/O/SATHYANESAN NADAR,
NABIATHY KAYAYARA PUTHEN VEEDU,
KARUMKULAM,
NEYYATINKARA TALUK.

BY ADV. SRI.SUMAN CHAKRAVARTHY

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 13/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P.No. 4467 of 2007

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Dated this the 13th day of December, 2007

ORDER

The Petitioners, who were accused Nos.1 to 3 in C.C.No.923 of 1996 on the file of Judicial First Class Magistrate-III, Neyyatinkara registered for offences punishable under Sections 326,324,323 and 452 r/w 34 IPC, challenge the conviction entered and sentence passed against them concurrently by the courts below for offences punishable under Section 324 and 326 IPC. For the conviction under Section 324 IPC, they were sentenced to one year simple imprisonment and for the conviction under Section 326 IPC, each of the petitioners was sentenced to rigorous imprisonment for two years with a direction that the sentences shall run concurrently.

2. The case of the prosecution can be summarised as follows:

On 4.9.96, at about 8.30 p.m., due to previous enmity towards PW1 and in furtherance of their common intention to voluntarily cause hurt to PW1, the three accused persons who trespassed into the courtyard of the house of PWI by name

'Nambiathy'. The 1st accused beat on the mouth of PW1 with an iron rod, resulting in his sustaining injuries to lips and loss of two teeth on the lower jaw. The 2nd accused beat PW1 with a cudgel twice on the head causing injuries. A1 beat PW1 on the back with the iron rod causing pain and injury. When the PW1 bent forwards a sum of Rs.2,450/- fell on the ground from his pocket and that amount was taken away by A3. When PW2, the son of PW1 intervened, the 2nd accused beat him on his chest and left palm with a cudgel and caused injury and fracture to the left palm bone. Seeing this, when PW3 the wife of PW1 screamed aloud, A1 to A3 rushed into the house and A2 caught hold of the hair of PW3 and pulled her down and A3 kicked on her abdomen causing pain. The accused have thereby committed offences punishable under Section 326,324 and 452 read with 34 IPC.

3. On the side of the prosecution 12 witnesses were examined as PW1 to PW12 and ten documents were got marked as Exts.P1 to P10 and a cudgel was marked as MO1 and two teeth were marked as MO2 series.

4. After the close of the prosecution evidence, the accused

were questioned under Section 313(1)(b) Cr.P.C with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence.

5. They examined one witness as PW1.

6. The learned Magistrate after trial as per judgment dated 30.06.1999 found the revision petitioners guilty of the offence punishable under Sections 324 and 326 and imposed the sentence as aforesaid. On appeal preferred by the revision petitioner as Cr.Appeal No.323 of 1999 before the Additional Sessions Court, Fast Track(Ad hoc)No.II, Thiruvananthapuram, the lower appellate court dismissed the appeal and confirmed the conviction entered and sentence passed against them. Hence this revision.

7. Even though the learned counsel appearing for the revision petitioners assailed on various grounds the conviction concurrently entered against the revision petitioners, this Court sitting in revision will be loath to interfere with the said conviction unless the appreciation of evidence by the courts

below has been faulty. I am not satisfied that the courts below have gone wrong in appreciating the documentary and oral evidence in the case. It was after a careful evaluation of the oral and documentary evidence in the case that the conviction have concurrently been recorded against the revision petitioners. The said conviction is confirmed.

8. What now remains to be considered is the question regarding the adequacy or otherwise of the sentence imposed on the revision petitioners. It was the pre-existing dispute for a pathway which had impelled the accused to attack PW1 and his family members. In the peculiar facts and circumstances of this case, I do not think that the revision petitioners deserve penal servitude by way of incarceration for the aforesaid offences. I am of the view that imprisonment till rising of the Court and an adequate compensation shall meet the ends of justice. Accordingly, for the conviction under Section 324 IPC, each of the petitioners shall undergo imprisonment till the rising of the court and shall also pay a sum of Rs.2,000/-,(Rupees two thousand only) 2,000/- (Rupees two thousand only) and 1,000/-

(Rupees one thousand only) each to PWs 1 to 3 respectively by way of compensation under Section 357(3) Cr.P.C.

9. For their conviction under Section 326 IPC, each of the revision petitioners is directed to undergo imprisonment till the rising of the court and to pay compensation of Rs.3,000/-(Rupees three thousand only), 3,000/- (Rupees three thousand only) and 1,000/- (Rupees one thousand only) respectively to PWs 1 to 3. The compensation shall be paid within a period of 45 days from today, failing which the defaulting accused shall undergo imprisonment for a period of two months by way of default sentence.

V. RAMKUMAR, JUDGE

sj

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P.A To Judge